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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

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MIKE GLEASON, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
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GARY PIERCE

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AZ CORP COMMISSION  
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IN THE MATTER OF THE COMMISSION ON ITS  
OWN MOTION INVESTIGATING THE FAILURE  
OF MOUNT TIPTON WATER COMPANY, INC.  
TO COMPLY WITH COMMISSION RULES AND  
REGULATIONS.

DOCKET NO. W-02105A-07-0510

PROCEDURAL ORDER

**BY THE COMMISSION:**

On September 5, 2007, the Arizona Corporation Commission ("Commission") Utilities Division Staff ("Staff") filed a Complaint and Petition for an Order to Show Cause ("Complaint") against Mount Tipton Water Company, Inc. ("Mount Tipton") for failure to comply with Commission Rules and Regulations.

On September 27, 2007, the Commission issued Decision No. 69913, ordering Mount Tipton to appear and show cause, at a time and place designated by the Hearing Division, to defend why its actions do not represent a violation of Decision No. 67162, Decision No. 66732, A.R.S. § 40-221, Decision No. 60988, and A.A.C. R14-2-407(C) and why other relief deemed appropriate by the Commission should not be ordered.

Decision No. 69913 also ordered the Hearing Division to schedule further appropriate proceedings in this matter.

Procedural conferences were held in this matter on October 22, 2007; November 30, 2007; and January 4, 2008. At the procedural conference on January 4, 2008, Mount Tipton's President and designated representative, Mr. Ed Bartlett, did not appear to represent Mount Tipton. Instead, Mr. Bruce Huebsch, Vice President of Mount Tipton, appeared to represent Mount Tipton. Mr. Huebsch stated that Mount Tipton's Board of Directors had not yet specifically authorized him to appear before the Commission on Mount Tipton's behalf, but said that Mount Tipton would file a Resolution passed by its Board of Directors authorizing Mr. Huebsch and other Officers of Mount Tipton to

1 represent it before the Commission. Such a Resolution has not yet been filed.

2 Also at the procedural conference on January 4, 2008, Staff and Mount Tipton agreed that  
3 much progress has been made to resolve the counts of the Complaint and Order to Show Cause and  
4 that it would be appropriate to proceed to hearing on the unresolved counts. Staff further indicated  
5 that it would be filing a pleading to dismiss most of the counts and to amend one of the remaining  
6 counts.

7 On January 10, 2008, Staff filed a Motion to Amend Count 4 of the Complaint and  
8 Voluntarily Dismiss Counts 1-3 and 5-7. Staff states in its Motion that documents filed by Mount  
9 Tipton have resolved the violations described in Counts 1-3 and 5-7, and Staff thus requests that  
10 those Counts be voluntarily dismissed from the Complaint.

11 Staff's request to dismiss those Counts that have been resolved to Staff's satisfaction is  
12 reasonable and should be granted.

13 Staff also states in its Motion that examination of the hook-up fee account report provided by  
14 Mount Tipton in response to Count 4 indicates that Mount Tipton has used hook-up fee funds to  
15 replace various plant, although Commission Decision No. 67162 required Mount Tipton to use those  
16 funds only for new customer capital improvements. In light of this new information, Staff requests  
17 that Count 4 of the Complaint and Order to Show Cause be amended to reflect that Mount Tipton has  
18 not handled the hook-up fee account as ordered by Decision No. 67162 and has therefore violated  
19 Decision No. 67162.

20 Staff's request to amend Count 4 of the Complaint and Order to Show Cause is reasonable in  
21 light of the new information received by Staff and should be granted.

22 IT IS THEREFORE ORDERED that Counts 1-3 and 5-7 of the Complaint and Order to Show  
23 Cause are dismissed.

24 IT IS FURTHER ORDERED that Count 4 of the Complaint and Order to Show Cause is  
25 amended to assert that Mount Tipton has not handled the hook-up fee account as ordered by Decision  
26 No. 67162 and has therefore violated Decision No. 67162.

27 IT IS FURTHER ORDERED that Mount Tipton shall file, **by January 31, 2008**, a  
28 Resolution passed by its Board of Directors specifically authorizing such of its Officers and/or

1 Employees as it deems appropriate to represent it before the Commission, as permitted under A.R.S.  
2 § 40-243(B).

3 IT IS FURTHER ORDERED that a **hearing** on Count 4 and Count 8 of the Complaint and  
4 Order to Show Cause shall commence on **February 15, 2008, at 9:30 a.m.**, or as soon thereafter as is  
5 practicable, at the Commission's offices, 1200 West Washington, Phoenix, Arizona 85007.

6 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules  
7 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to the practice of law and admission  
8 *pro hac vice*.

9 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113—Unauthorized  
10 Communications) applies to this proceeding and shall remain in effect until the Commission's  
11 Decision in this matter is final and non-appealable.

12 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive  
13 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

14 DATED this 11<sup>th</sup> day of January, 2008.

15  
16  
17   
18 SARAH N. HARPRING  
ADMINISTRATIVE LAW JUDGE

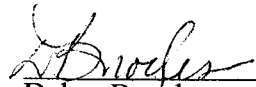
19 Copies of the foregoing mailed/delivered  
20 this 11<sup>th</sup> day of January, 2008, to:

21 MOUNT TIPTON WATER  
22 COMPANY, INC.  
P.O. Box 38  
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23 Christopher Kempley, Chief Counsel  
24 Legal Division  
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25 1200 West Washington Street  
Phoenix, AZ 85007

Ernest G. Johnson, Director  
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26  
27 By:   
28 Debra Broyles  
Secretary to Sarah N. Harpring